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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/815,149	03/30/2004	Frans Vandenbroek	A-2810-AL	8211

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APPLIED MEDICAL RESOURCES CORPORATION
22872 Avenida Empresa
Rancho Santa Margarita, CA 92688

EXAMINER

MCEVOY, THOMAS M

ART UNIT	PAPER NUMBER
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3731

MAIL DATE	DELIVERY MODE
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10/27/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/815,149	Applicant(s) VANDENBROEK ET AL.	
	Examiner THOMAS MCEVOY	Art Unit 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 June 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-18 and 24-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-18 and 24-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 21st 2010 has been entered.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Art Unit: 3731

4. Claims 10-18, 24, and 26-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ortiz et al. (US 5,163,945) in view of Allen et al. (US 5,354,304) or Mastri et al. (US 6,032,849).

Regarding claim 10, Ortiz et al. disclose a single clip jaw assembly adapted for use with a handle assembly in a surgical clip applier, comprising: a pair of jaws 24 adapted to receive a surgical clip, the jaws being movable between an open state (Figure 10) and a closed state (Figure 11); a pair of elongate support arms 40 each adapted to support an associated one of the jaws between the open state of the jaws and the closed state of the jaws; a bridge (at 51, Figure 9) disposed between the support arms to hold the jaws in an aligned relationship between the open state and the closed state; a housing 50 disposed over at least the bridge, the housing having a generally fixed relationship with the bridge while permitting movement of the jaws between the open state and the closed state, and the housing having no clip loading mechanism housed therein (Figure 9). Ortiz et al. fail to disclose that the housing has a coupling as claimed. Allen et al. and Mastri et al. teach that a handle assembly (10/12 of Allen et al. or 12/14 of Mastri et al. - where a "handle assembly" can be broadly defined given that Applicant's scissor arms 27 and 30 are disclosed as part of the handle assembly) having a central longitudinal axis (defined by member 12 of Allen et al. or 14 of Mastri et al.) can be removably and non-rotationally attached to a clip applier housing using a coupling 94 so that multiple, disposable clip applier units of varying size can be used with one handle assembly (col. 6, lines 27-31 of Allen et al. or col. 2, lines 17-24). It would have been obvious to one of ordinary skill in the art in view of Allen et

Art Unit: 3731

al. or Mastri et al. to have provided a coupling to the housing 50 of Ortiz so that multiple, disposable clip applier units of varying size could be used with one handle assembly (remaining portion of 50 and attached handle components). Ortiz et al. further disclose that the jaw assembly is configured to receive only a single surgical clip at a time, and the pair of jaws is adapted to receive a surgical clip exteriorly of the jaw assembly (evident from Figures 1-8). Regarding claim 11, the jaws, the support arms, and the bridge are integral and form a jaw component (evident from Figure 9). Regarding claim 12, the claimed phrase "wherein the housing the molded over the bridge" is being treated as a product by process limitation; that is, as set forth in MPEP 2113, product by process claims are not limited to the manipulation of the recited steps, only the structure implied by the steps. Once a product appearing to be substantially the same or similar is found, a 35 USC 102/103 rejection may be made and the burden is shifted to applicant to show an unobvious difference. MPEP 2113. The housing 50 appears to be structurally equivalent to an identical housing which is formed by being molded over the bridge. The housing 50 is capable of being formed by this process while maintaining all the structural features disclosed in the reference. Regarding claim 13, the arms are resilient between the open position of the jaws and the closed position of the jaws (col. 5, lines 19-20). Regarding claim 14, at least one of the arms is biased to maintain the jaws in the open position (col. 5, lines 19-20). Regarding claim 15, the arms are disposed generally in a plane separating a first side of the arms from a second side of the arms; and the housing is disposed with first portions adjacent the first side of the arms and second portions adjacent the second side of the arms (Figure 3). Regarding

Art Unit: 3731

claim 16, the upper and lower hemispheres of the housing are adjacent to the arms as claimed and are included in the coupling. Regarding claim 17, the jaws are movable in the plane between the open state and the closed state (Figure 10 vs. Figure 11).

Regarding claim 18, member 46/48 can be considered as the housing with member 58 being the coupling. The housing is generally fixed to the bridge. Member 48 has the first and second portions as claimed. The arms can be considered as the portions proximal of members 42. When member 48 is advanced forward, the arms move inward, away from contact with the sides of the housing except for the first and second portions (top and bottom of arms contacting member 48). Regarding claims 24 and 25, an analogous structure to the Allen et al. mounting stub 92 would need to be provided which is received by an aperture at the end of housing 50 (of Ortiz et al.). Mastri et al. also disclose mounting stubs 428 and apertures (e.g. 630a and 630b) as claimed which would need to be provided on the Ortiz et al. housing. Regarding claim 26, the coupling and mounting stub could be used to connect to a handle which is configured for use with a multiple-clip cartridge. Regarding claims 27 the support arms of Ortiz et al. extend through an opening in the distal end of the housing and the bridge is housed by the housing adjacent the proximal end (evident from Figure 3 of Ortiz et al. when considering that the area at/around reference 46 would be the proximal end of the housing as modified in view of Allen et al.). Regarding claim 28, no surgical clips are received into the housing (Figure 4 of Ortiz et al.). Regarding claim 29, in view of Mastri et al., the coupling would extend transverse to the housing longitudinal axis as claimed.

Response to Arguments

5. Applicant's arguments filed June 21st 2010 have been fully considered but are moot in view of the new grounds of rejection.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas McEvoy whose telephone number is (571) 270-5034. The examiner can normally be reached on M-F, 9:00-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan Nguyen can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

7. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Thomas Mcevoy/
Examiner, Art Unit 3731

/Anhtuan T. Nguyen/
Supervisory Patent Examiner, Art Unit 3731
10/23/10